

ORIGINAL

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HARRISBURG, PA

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NANCY LEANDREA, CLERK

REQUEST TO FILE  
SUPPLEMENT TO MOTION UNDER 28 U.S.C. SEC 2255  
TO VACATE SET ASIDE, OR CORRECT SENTENCE  
BY A PERSON IN FEDERAL CUSTODY

This is a supplement to petitioner's motion under 28 U.S.C. 2255. Petitioner filed the motion on September 2, 2004. As of this date, there has been no response to the motion by the U.S. Attorney's office. Accordingly, no harm will be caused by the filing of this supplement, and it is respectfully requested that the Court allow this supplement to be added to the motion.

PETITIONER'S COUNSEL FAILED TO OBJECT TO THE PROPOSED SEPARATE GROUPING OF THE MAIL FRAUD AND MONEY LAUNDERING COUNTS.

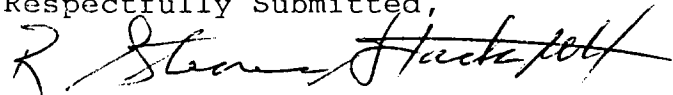
These counts should have been included in a single group, and the failure of counsel to properly object to the computation set forth in the presentence report resulted in an increased guidelines level of two points.

Although the same bank checks were utilized by the government in connection with the jury findings and convictions for mail fraud and money laundering, and the victim was the same, the court treated them as two distinct groups for purposes of guidelines grouping, which is at variance with decisions of the Third Circuit.

Petitioner's co-defendant, Joseph Cordo, contested this very issue in his appeal, and the Court of Appeals remanded his case to the District Court for resentencing in accordance with the established precedents in this circuit (Docket No. 01-2392), which recognized that money laundering counts group under U.S.S.G. Sec. 3D1.2(b) with counts charging the fraud that generated the proceeds in question in circumstances like those involved in this case. United States v. Smith, 186 F.3d 290, 297 (3rd Cir. 1999), United States v. Diaz, 245 F.3d 294, 300 3rd Cir. 2001); United States v. Omoruyi, 260 F.3d 291, 298 (3rd Cir. 2001). In this case, all the transactions in question were the same for purposes of both the mail fraud and money laundering and the same victim (the bank) was involved in both.

Accordingly, it is submitted that the sentence be vacated and that the new sentence be calculated without the two points for the grouping.

Respectfully Submitted,

  
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